

Best Roofing Co., Inc. and Belton Roofing and Construction, Inc. alter egos, John Krum, an Individual and Susan Krum, an Individual and United Union of Roofers, Waterproofers and Allied Workers, Local No. 20, AFL-CIO. Cases 17-CA-14094 and 17-CA-14322

May 27, 1993

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 27, 1991, the National Labor Relations Board issued a Supplemental Decision and Order remanding the above-entitled proceeding¹ to the Regional Director for the purpose of arranging a hearing before an administrative law judge as to the personal liability of John Krum and Susan Krum for delinquent wages and overtime, benefit contributions, and membership dues arising from the Respondent's failure to make timely payments of benefits, union dues, and wages due and owing under the Respondent's contract with the Union. Thereafter, on October 15, 1991, the Charging Party brought an action under Section 301 of the Act against Respondents Best, Belton, John Krum, and Susan Krum to collect union dues and fringe benefit contributions due and owing under the Charging Party's collective-bargaining agreement with Respondent Best. Subsequently, the United States District Court for the Western District of Missouri issued an order granting partial summary judgment, ordering, *inter alia*, that John Krum and Susan Krum be held personally liable for delinquent employee benefit contributions and for delinquent union membership dues.²

On July 20, 1992, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. The General Counsel's motion requests the Board to grant summary judgment with respect to the allegations of the compliance specification concerning the individual liability of John Krum and Susan Krum. The General Counsel asserts that the district court's

decision regarding the individual liability of John Krum and Susan Krum has resolved the issue of their individual liability and that the Board should afford collateral estoppel effect to this district court proceeding by granting the Motion for Summary Judgment.³ On July 22, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent failed to file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

The General Counsel submits that the only issue that remains following the remand of the compliance specification is the individual liability of John Krum and Susan Krum as a single integrated employer with Respondents Best Roofing Co., Inc. (Best), and Belton Roofing and Construction Inc. (Belton), and as alter egos of those Respondents. As noted above, the General Counsel requests that we give collateral estoppel effect to the district court's order and grant summary judgment in his favor on this issue. We grant the General Counsel's Motion for Summary Judgment, but only for the reasons set out below.

Initially, the question before us is the effect the district court decision has on the instant proceeding. Although we decline to afford collateral estoppel effect to that decision, for reasons of judicial economy we shall defer to the district court's findings of fact and adopt them as our own in this proceeding. We find that the Respondent is not prejudiced thereby for the following reasons. First, the issue presented here, whether the corporate veil should be pierced to hold John Krum and Susan Krum individually liable for the amounts due and owing by the Respondents Best and Belton, was squarely in issue in the district court proceeding and its resolution was necessary for the disposition of that case. Accordingly, the parties there had every incentive to fully litigate the issue in that proceeding. Second, the district court's factual findings are undisputed. In this regard, the court's findings of fact included only facts that "either [had] been agreed to or admitted by the parties or [had] been properly

¹ 304 NLRB No. 92. The Board there granted the General Counsel's Motion for Partial Summary Judgment as to amounts of back-pay owed by the Respondents as set out in the compliance specification. The Board also remanded to the Regional Director the issue of whether Respondent First Class Roofing and Remodeling was the successor of Respondents Best and Belton. On January 30, 1992, the Regional Director amended the compliance specification by deleting all references to First Class and, after further investigation, decided not to institute further proceedings with respect to it. Accordingly, First Class' status as a successor employer is not at issue here.

² *Roofers Local 20 v. Best Roofing Co.*, Case 89-0502-CV-W-9 (W.D.MO. Oct. 15, 1991). The district court's order covers the same fringe benefit contributions and union dues set forth in the compliance specification. The district court proceeding did not involve wages due employees under the collective-bargaining agreement.

³ On August 6, 1992, the General Counsel filed with the Board a Statement in Support of Motion for Summary Judgment with exhibits attached. In his statement, the General Counsel contends that the district court's order is final and binding on the parties and therefore should be accorded collateral estoppel effect by the Board. In this regard, the General Counsel points out that on February 19, 1992, the district court issued an order directing that final judgment be entered against the Respondents and that no appeal was taken from that final judgment.

presented by one party without objection from the others.”⁴ Third, as noted above, no appeal was taken from the final judgment entered in the district court proceedings. Thus, the factual findings set out there are not subject to challenge in court. Finally, as noted above, the Respondents failed to file an answer to the Notice to Show Cause in the instant proceeding. Therefore, the district court’s factual findings are not challenged here and remain undisputed.

A review of the facts as set out in the district court’s decision reveals the following. Best began operating in 1976 as a sole proprietorship and was incorporated in 1985. John Krum owns 249 shares of Best stock and serves as its president. Susan Krum, John Krum’s wife, owns the other 251 shares of Best stock and is its secretary-treasurer. John Krum was the only salaried employee of Best, earning \$1000 per week; all other employees were paid on an hourly basis. From mid-1988 to January 1989, Best maintained its office in one room of the residence of John and Susan Krum (the Krums). Best did its banking with Boatmen’s First National Bank, where it maintained separate payroll and general checking accounts. Best also had a \$30,000 line of credit with Boatmen’s secured by a pledge of the Krums’ residence. Best paid the Krums \$322.38 per month as rent for storing materials and equipment on a 20-acre tract the Krums owned in Peculiar, Missouri. This amount corresponded to the amount of the monthly mortgage payment the Krums owed on that property.

Best regularly used four or five of the Krums’ trucks for company business. These trucks were titled in John and Susan Krum’s names. Best agreed to lease the trucks for an amount equivalent to the amount of the loan payments due on the trucks. When the loans on some of the trucks were paid in full, Best ceased making lease payments for the use of the trucks. Best also made monthly loan payments to Ford Motor Credit Company on two 1987 Ford Rangers titled in John and Susan Krum’s names and used primarily by the Krums’ sons, Matt and Mike.

The Krums borrowed money periodically from Best. These loans were not evidenced by a promissory note or loan agreement and did not have a stated interest rate.⁵ The Krums were not required to provide security for these loans and there was no provision for regular, periodic repayment. The Krums used some of the money to pay personal bills and expenses. The Krums last borrowed money from Best in 1989.⁶ Best ceased doing business in January 1989.

⁴ *Roofers Local 20 v. Best Roofing Co.*, supra at fn. 1.

⁵ Susan Krum, who handled Best’s bookkeeping, did not know how much money she and her husband borrowed from the Company, but believed that they still owe money to Best.

⁶ Best issued a check dated January 5, 1989, payable to John Krum in the amount of \$3500. This check was drawn on Best’s general account and signed by Susan Krum. On February 21, 1989, Best

Belton began operation in late January 1989 after Best ceased operations.⁷ Mike Krum is its president and Matt Krum its vice president.⁸ Each owns 250 shares of stock. There are no other shareholders. Neither recalls paying any money to Belton for their shares of stock. Neither contributed any money to the Company to meet operating expenses. Neither participated in Belton’s incorporation process, which was handled by Susan Krum. Susan Krum also arranged with Boatmen’s Bank for general and payroll checking accounts for Belton. Neither Mike nor Matt Krum participated in making these arrangements. John and Susan Krum personally guaranteed Belton’s line of credit at Boatmen’s by pledging their home as collateral. Belton drew on that line of credit to meet operating expenses.

Mike and Matt Krum are paid hourly wages by Belton for the time that they spend working on roofs. They are lower paid than more experienced Belton roofers. Both complete timecards for the hours that they work. They are not compensated for the time they spend on duties performed in their capacities as corporate officers. Mike Krum estimates and bids jobs for Belton. He and Matt Krum make personnel decisions for Belton. Mike Krum consults with Belton’s foremen, who are experienced roofers, about technical problems.

John Krum works for Belton as “general manager and consultant.” His duties are to provide instruction and direction to Belton employees about roofing. He also sometimes works as a roofer. He is compensated for his services on a job-by-job basis rather than at a specific hourly rate. He does not fill out a timecard. He makes a “recommendation” to Matt and Mike Krum concerning how much money Belton should pay him. He bases his estimate on “how much [he has] contributed to a particular job.” John Krum has loaned money to Belton. Mike and Matt Krum do not know how much money Belton has borrowed from him. There is no written record of these transactions and no

issued a check drawn on its general account payable to John Krum in the amount of \$1837 and signed by Susan Krum. Both checks have a notation that they are “loans” to John Krum. Susan Krum had no independent recollection of the transactions, but based on the notations concluded that they were company loans to John Krum. John Krum testified that the checks reflected payment of back wages owed to him by Best.

⁷ We have previously found that Belton and Best are alter egos. See *Best Roofing Co.*, 298 NLRB 754, 754 fn. 2 (1990).

⁸ At the time of the district court proceeding in 1991, Mike Krum was 21 years old and Matt Krum was 18 years old. In the fall of 1989, Mike Krum dropped out of college and began working for Belton full time. He had not worked for Belton prior to that time and had worked for Best only on a part-time basis during vacations from school. Matt Krum began working full time for Best after he dropped out of high school in the 10th grade. Neither owned or operated a business prior to the time that they became involved with Belton.

written agreement regarding the amount of interest to be charged or the schedule for repayment.

Susan Krum works for Belton without pay. She has shown Mike, Matt, and Patricia Krum (Matt's wife) how to do the company bookkeeping. Susan Krum continues to provide assistance because Patricia's training is "not complete." Matt and Mike Krum do not regularly review Belton's ledgers. Patricia Krum purportedly reviews them, but makes no reports to either Mike or Matt Krum regarding Belton's financial status.

On February 23, 1989, Best issued a check payable to Belton in the amount of \$6000 drawn on Best's general account. Susan Krum signed the check. According to Matt Krum, the check was a loan from Best to Belton to purchase roofing materials. There was no loan agreement, promissory note, or other written document memorializing this transaction. No repayment schedule was established and no specific interest rate was set. The Krums used some of this money to pay various household expenses.⁹ Best issued a check on its general account dated February 10, 1989, payable to Matt Krum in the amount of \$2725. Susan Krum said that this was a "loan" to Matt Krum.¹⁰

Belton maintains its offices in the Krums' home as Best had done. Belton pays no rent for the use of this space. Belton also continued Best's practice of renting the Krums' Peculiar, Missouri property to store equipment and materials. John Krum suggested a rental rate of \$322.38 per month. Neither Mike nor Matt Krum made any effort to determine if this was a fair market price or if Belton could rent storage space elsewhere at a cheaper rate. Belton also continues Best's practice of making the loan payments on the Ford Ranger pickup trucks used by Mike and Matt Krum that are titled in John and Susan Krum's names. On February 16, 1989, Belton made a \$4000 down payment on a 1989 Chevrolet pickup truck titled in John Krum's name. During calendar year 1989, Belton paid approximately \$2851 to GMAC on the pickup truck.

In determining whether the district court's findings of fact require that the Krums be held personally liable, we observe that the Board has applied the same standard as the courts to determine whether the corporate veil should be pierced.¹¹ Thus, we will pierce the corporate veil not only where the corporate status is used to perpetrate a fraud, but also where justice so requires, "where the individual's personal affairs and

the company's affairs have been so intermingled that corporate boundaries have been effectively blurred."¹² In determining whether justice requires that the corporate veil be pierced, we examine several factors, including the failure to observe corporate formalities; the nonfunctioning of officers or directors; the absence of corporate records; and the use of the corporation as a facade for the operations of the dominant stockholder.¹³ For the reasons explained below, we find that those factors are present here.

Applying the factors set out above to these facts, we find that the evidence establishes that John and Susan Krum's personal affairs have been so intermingled with Best and Belton's affairs "that corporate boundaries have been effectively blurred." In this regard, we find that the Krums' failure to observe corporate formalities is evidenced by their failure to keep written corporate records of the amount of money loaned or borrowed between the Krums and Best and Belton. Thus, the loans from Best to the Krums were not evidenced by a promissory note or loan agreement and had no stated interest rate. There were no provisions for repayment and the Krums were not required to provide security for the loans. Likewise, there was no loan agreement or promissory note for Best's loan of \$6000 to Belton.

The Krums' dominance of Best and Belton is evidenced by their arrangement of these loans at will and by their use of moneys from both loans to satisfy personal obligations. The Krums' dominance of the corporations is further established by the fact that the corporations paid obligations that were actually the Krums' personal obligations. In this regard, the corporations paid the monthly installments on the Krums' trucks and each corporation "rented" a portion of the Krums' Peculiar, Missouri property for an amount equal to the Krums' monthly mortgage payment on the property. Thus, it is clear that the Krums used the corporations' assets as their own.

Finally, the evidence establishes that Mike and Matt Krum, Belton's officers and shareholders, functioned in neither capacity. It was Susan Krum who handled Belton's incorporation and who oversees its finances. It is John Krum, in his role as "general manager and consultant," who oversees Belton's actual operations. Mike and Matt Krum play no part in the oversight of Belton's operations nor do they have any knowledge of or concern for its financial affairs. In these circumstances, justice requires that the corporate veil be pierced and that John Krum and Susan Krum be found individually liable here. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

⁹Matt Krum believed that a portion of the loan may have been repaid with checks payable to John Krum and drawn on Belton's general account.

¹⁰Matt Krum stated that the check was a "bonus" to be divided equally between himself and his brother Mike. John Krum said that it was a gift to Matt.

¹¹The Board has "applied a *Federal standard* in determining whether a person or entity should be liable for a backpay award in an unfair labor practice case." *Greater Kansas City Roofing*, 305 NLRB 720 fn. 3 (1991) (emphasis added).

¹²Id.

¹³Id.

ORDER

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is granted with respect to the allegations of the compliance specification concerning the individual liability of John Krum and Susan Krum and that they are liable for the amounts set forth in the compliance specification.

IT IS FURTHER ORDERED that the Respondents, Best Roofing Co., Inc., and Belton Roofing and Construction, Inc., Belton, Missouri, their officers, agents, successors, and assigns, and John Krum and Susan Krum, shall make whole the individuals named below by paying the funds the amounts set forth below with interest accrued to the date of payment as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and by paying the individuals the amounts following their names, with interest accrued to the date of payment as prescribed in *New Horizons for the Retarded*,

283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Health & Welfare Fund	\$10,803.75
Pension Fund Local 20	7,851.56
International Pension Fund	5,967.20
Apprenticeship Training	
Program Fund	879.39
Roofers Local 20 Union Dues	1,441.71
James Keller	596.05
Craig Wilson	54.05
Lewis Buckner	156.97
John Evans	314.95
Tracy McMillan	457.00
Mike Fairall	3,594.03
Wendall Dennis	541.53
Tim Jackson	283.65
Stuart Stevens	194.82
Bryan Sheppard	82.62
Larry Crowder	9.18